

MAGNEGAS APPLIED TECHNOLOGY SOLUTIONS, INC.

Form 424B5

January 11, 2019

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Registration No. 333-207928

PROSPECTUS SUPPLEMENT

(To Prospectus dated June 15, 2016)

31,000,000 shares of Common Stock

Pursuant to this prospectus supplement and the accompanying prospectus, we are offering up to 31,000,000 shares of our common stock (the “Common Stock”). The shares of Common Stock are being sold directly to certain institutional accredited investor(s) pursuant to a securities purchase agreement dated January 11, 2019. The 31,000,000 shares of Common Stock are being sold at a purchase price of \$0.14 per share.

In a concurrent private placement, we are also selling to investors warrants to purchase 31,000,000 shares of our Common Stock for each share purchased for cash in this offering, exercisable at a price of \$0.232 per warrant share (the “Warrants”). The Warrants will be exercisable beginning on the earlier of the date the Company obtains the approval of its stockholders to the issuance of the shares of Common Stock underlying the Warrants (the “Warrant Shares”) or the six-month anniversary of the date of issuance (the “Initial Exercise Date”). *The Warrants and the Warrant Shares are not being registered under the Securities Act of 1933, as amended (the “Securities Act”) pursuant to the registration statement of which this prospectus supplement and the accompanying prospectus form a part and are not being offered pursuant to this prospectus supplement and the accompanying prospectus. The Warrants are being offered pursuant to an exemption from the registration requirements of the Securities Act provided by Section 4(a)(2).*

Maxim Group LLC acted as a placement agent for the offering and is entitled to a fee equal to 6% of the gross proceeds raised in the offering of the Common Stock and the concurrent private offering of the Warrants.

The proceeds to us before expenses in this offering will be \$4,340,000. We estimate the total expenses of this offering will be \$360,400.

Our Common Stock is quoted on The Nasdaq Capital Market under the symbol “MNGA.” On January 10, 2019, the last reported sales price for our Common Stock on The Nasdaq Capital Market was \$0.232 per share.

As of November 13, 2018, the aggregate market value of our outstanding common shares held by non-affiliates was approximately \$66.56 million based on 154,813,956 common shares held by non-affiliates and the last reported sale price of \$0.43 per share on The Nasdaq Capital Market on such date. Pursuant to General Instruction I.B.6 of Form S-3, in no event will we sell shares pursuant to this prospectus with a value of more than one-third of the aggregate market value of our common shares held by non-affiliates in any 12-month period, so long as the aggregate market value of our common shares held by non-affiliates is less than \$75,000,000. Other than our sale of 21,800,000 shares of Common Stock for an aggregate purchase price of \$5,014,000 on October 11, 2018 and 25,000,000 shares of Common Stock for an aggregate purchase price of \$3,750,000 on August 28, 2018 and our sale of shares of Series F Convertible Preferred Stock for an aggregate offering price of \$556,016 on June 27, 2018, we have not offered any securities pursuant to General Instruction I.B.6. of Form S-3 during the prior 12 calendar month period that ends on and includes the date hereof.

We have engaged Maxim Group LLC as our sole placement agent for this offering (the “Placement Agent”). The Placement Agent is not purchasing or selling any Common Stock offered by this prospectus supplement and the accompanying prospectus but will use its reasonable best efforts to arrange for the sale of the Common Stock offered. See “Plan of Distribution.” This offering is expected to close on or about January 15, 2019, subject to customary closing conditions, without further notice to you. We have not arranged to place the funds from the investors in an escrow, trust or similar account.

We ceased to be an emerging growth company, as defined in Section 2(a) of the Securities Act of 1933, as amended, as of December 31, 2017.

Investing in our securities involves a high degree of risk. Please read “Risk Factors” beginning on page S-5 of this prospectus supplement and in the documents incorporated by reference into this prospectus supplement.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities, or determined if this prospectus supplement or the accompanying prospectus are truthful or complete. Any representation to the contrary is a criminal offense.

	Per Share of Common Stock	Total
Public offering price	\$0.14	\$4,340,000

Placement agent fee ⁽¹⁾	\$0.00084	\$260,400
Proceeds to us, before expenses ⁽²⁾	\$0.1316	\$4,079,600

We have agreed to pay the Placement Agent an aggregate cash fee equal to 6% of the gross proceeds in this (1) offering from sales arranged by the Placement Agent. We also have agreed to pay certain expenses of the Placement Agent, as discussed under “Plan of Distribution” in this prospectus supplement.

(2) Does not include additional compensation received by the Placement Agent, including reimbursement of legal fees and out of pocket expenses, as further discussed under the heading “Plan of Distribution” herein.

Sole Placement Agent

Maxim Group LLC

Prospectus Supplement dated January 11, 2019.

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You should rely only on the information contained in or incorporated by reference in this prospectus supplement, the accompanying prospectus and in any free writing prospectus that we have authorized for use in connection with this offering. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information in this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and in any free writing prospectus that we have authorized for use in connection with this offering, is accurate only as of the date of those respective documents. Our business, financial condition, results of operations and prospects may have changed since those dates. You should read this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and any free writing prospectus that we have authorized for use in connection with this

offering, in their entirety before making an investment decision. You should also read and consider the information in the documents to which we have referred you in the sections of this prospectus supplement entitled “Information Incorporated by Reference” and “Where You Can Find More Information.”

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ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus supplement and the accompanying prospectus form part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration process. This document contains two parts. The first part consists of this prospectus supplement, which provides you with specific information about this offering. The second part, the accompanying prospectus, provides more general information, some of which may not apply to this offering. Generally, when we refer only to the “prospectus,” we are referring to both parts combined. This prospectus supplement may add, update or change information contained in the accompanying prospectus. To the extent that any statement we make in this prospectus supplement is inconsistent with statements made in the accompanying prospectus or any documents incorporated by reference herein or therein, the statements made in this prospectus supplement will be deemed to modify or supersede those made in the accompanying prospectus and such documents incorporated by reference herein and therein.

Unless the context otherwise requires, all references to the terms “we,” “us,” “our,” and the “company” throughout this prospectus supplement mean MagneGas Applied Technology Solutions, Inc. and its subsidiaries.

All references in this prospectus supplement to our financial statements include, unless the context indicates otherwise, the related notes.

The industry and market data and other statistical information contained in the documents we incorporate by reference are based on management’s own estimates, independent publications, government publications, reports by market research firms or other published independent sources, and, in each case, are believed by management to be reasonable estimates. Although we believe these sources are reliable, we have not independently verified the information.

The information contained in this prospectus supplement or the accompanying prospectus is accurate only as of the date of this prospectus supplement or the accompanying prospectus, regardless of the time of delivery of this prospectus supplement, the accompanying prospectus or of any sale of the securities. We further note that the representations, warranties and covenants made by us in any agreement that is filed as an exhibit to any document that is incorporated by reference in this prospectus supplement or the accompanying prospectus were made solely for the benefit of the parties to such agreement, including, in some cases, for the purpose of allocating risk among the parties to such agreements, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties and covenants should not be relied on as accurately representing the current state of our affairs.

PROSPECTUS SUPPLEMENT SUMMARY

The following summary of our business highlights some of the information contained elsewhere in or incorporated by reference into this prospectus supplement. Because this is only a summary, however, it does not contain all of the information that may be important to you. You should carefully read this prospectus supplement and the accompanying prospectus, including the documents incorporated by reference, which are described under “Information Incorporated by Reference” and “Where You Can Find More Information” in this prospectus supplement. You should also carefully consider the matters discussed in the section entitled “Risk Factors” in this prospectus supplement, in the accompanying prospectus and in other periodic reports incorporated herein by reference.

Our Company

MagneGas Applied Technology Solutions, Inc. (the “Company”) is an alternative energy company that has developed a proprietary plasma arc system (“Plasma Arc Flow Units” or “Plasma Arc Flow System”) which generates hydrogen based synthetic gases through the gasification of various types of liquid feedstocks. The Company’s synthetic gas – MagneGas2® - is bottled in cylinders and is distributed to the metalworking market as an alternative cutting fuel to acetylene and propane. Through the course of its business development, the Company has established a retail and wholesale platform and a network of brokers to sell its MagneGas2® for use in the metalworking and manufacturing industries throughout the world. Additionally, the Company is in the process of developing ancillary uses of MagneGas2® for additional end-user applications. The Company’s Plasma Arc Flow Units include various commercial applications, most notably the sterilization of liquid waste, which has resulted in the Company’s marketing and sale of Plasma Arc Flow Units for third-party commercial use.

In the second quarter of 2014 the Company began implementing an acquisition-focused growth strategy that was highlighted by the October 2014 purchase of Equipment Sales and Service, Inc. (“ESSI”). ESSI is a full line seller of industrial gases and equipment for the welding and metal cutting industries. Since acquiring ESSI, the Company has opened four ESSI retail locations and distributes MagneGas2® as a metal cutting fuel as well as other gases and welding supplies. Additional acquisitions and the success of ESSI has allowed the Company to augment its acquisition growth model with significant organic growth.

Between February and March of 2017, the Company formed five wholly owned subsidiaries in the State of Delaware respectively called MagneGas Energy Solutions, LLC, MagneGas Welding Supply, LLC, MagneGas Real Estate Holdings, LLC, MagneGas IP, LLC and MagneGas Production, LLC. The Company formed these entities to hold the various types of Company assets their names indicate.

In January 2018, the Company acquired all of the assets of GGNG Enterprises, Inc. and began doing business in southern California under the name “Complete Welding San Diego”. In February 2018, the Company acquired all of the assets of Green Arc Supply, L.L.C. and began doing business in Texas and Louisiana under the name “Green Arc Supply”. On April 3, 2018, the Company acquired all of the capital stock of Trico Welding Supplies, Inc. and began doing business in Northern California under the name “Trico Welding Supplies”.

On June 29, 2018, the Company organized MagneGas Limited under the laws of the United Kingdom. On October 30, 2018, the Company organized MagneGas Ireland Limited under the laws of Ireland.

On September 25, 2018, the Company changed its name from “MagneGas Corporation” to “MagneGas Applied Technology Solutions, Inc.”

In October 2018, the Company acquired all of the stock of Paris Oxygen Company, United Welding Specialties of Longview, Inc. and Latex Welding Supply, Inc., and expanded its business in Texas and Louisiana.

Patents and Trademarks

The Company has patent ownership on technology in the United States and is exploring filing patents under the Patent Cooperation Treaty in other areas of the world as needed. The Company owns *U.S. Patent No. 6,972,118* titled, “Apparatus and Method for Processing Hydrogen, Oxygen and Other Gases;” and *U.S. Patent No. 8,236,150* titled, “Plasma-Arc-Through Apparatus and Process for Submerged Electric Arcs.” In addition to this patent, the Company has several patents pending. The Company has a 20% ownership interest in MagneGas entities that control intellectual

property in Europe, Africa and China.

Each of the patents identified below have been assigned to MagneGas IP, LLC and have defects in their chain of title. The Company believes that it has corrected the chain of title defects and that it owns the patents listed below. However, there is a risk that the patents listed below are vulnerable to ownership and/or validity challenges.

U.S. Patent No. 6,183,604 – issued February 6, 2001, expires August 11, 2019, titled “Durable and efficient equipment for the production of a combustible and non-pollutant gas from underwater arcs and method therefor;”

U.S. Patent No. 6,673,322 – issued January 6, 2004, expires August 11, 2019, titled “Apparatus for Making a Highly Efficient, Oxygen Rich Fuels;” and

U.S. Patent No. 6,663,752 – issued December 16, 2003, expires July 9, 2022, titled “Clean Burning Liquid Fuel Produced via a Self -Sustaining Processing of Liquid Feedstock.”

In addition to the above-listed utility patents, the Company is the assignee of multiple pending provisional applications and non-provisional utility patent applications. Furthermore, the Company is the owner of record for the registered trademark MAGNEGAS in both the United States and Mexico.

Corporate Information

MagneGas Applied Technology Solutions, Inc. was organized under the laws of the State of Delaware on December 9, 2005. Our principal office is located at 11885 44th Street North, Clearwater, Florida 33762 and its telephone number is (727) 934-3448.

We file Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other items with the Securities and Exchange Commission, or the SEC. We provide access free of charge to all of these SEC filings, as soon as reasonably practicable after filing, on our internet site located at www.magnegas.com. The information on our website is not incorporated by reference into this prospectus supplement or the accompanying prospectus and should not be considered to be part of this prospectus supplement or the accompanying prospectus.

The Offering

Common Stock offered by MagneGas: 31,000,000 shares of Common Stock. Each share of Common Stock has a purchase price of \$0.14 per share.

Common Stock to be outstanding after this offering: 186,122,528 shares, if all the shares of Common Stock are purchased in the offering.

Use of proceeds: We intend to use the proceeds from this offering for working capital and general corporate purposes. See “Use of Proceeds” on page S-8 of this prospectus supplement.

Nasdaq Capital Market (“Nasdaq”) Symbol: MNGA

Concurrent Private Placement: In a concurrent private placement, we are selling to purchasers of our Common Stock in this offering Warrants to purchase 31,000,000 shares of our Common Stock for each share purchased for cash in this offering. The Warrants will be exercisable beginning on the Initial Exercise Date at an exercise price of \$0.232 per share and will expire 42 months following the closing of this offering. *The Warrants and the Warrant Shares are not being registered under the Securities Act pursuant to the registration statement of which this prospectus supplement and the accompanying prospectus form a part and are not being offered pursuant to this prospectus supplement and the accompanying prospectus.* The Warrants are being offered pursuant to an exemption from the registration requirements of the Securities Act provided by Section 4(a)(2).

Risk factors: This investment involves a high degree of risk. See the information contained in or incorporated by reference under “Risk Factors” beginning on page S-5 of this prospectus supplement and in the documents incorporated by reference into this prospectus supplement.

The number of shares of Common Stock to be outstanding immediately after this offering is based on 155,122,528 shares outstanding on January 11, 2019 and excludes as of that date:

231,084 shares issuable upon the exercise of options;

2,916,667 shares of Common Stock that are issuable upon the exercise of common stock warrants issued in the June 2017 Private Placement;

27,778 shares of Common Stock that are issuable upon the exercise of placement agent warrants issued in the June 2017 Private Placement;

25,000,000 shares of Common Stock that are issuable upon the exercise of common stock warrants issued in the July 2018 Warrant Offering;

21,800,000 shares of Common Stock that are issuable upon the exercise of common stock warrants issued in a private placement in October 2018; and

Shares of common stock that are issuable upon (a) the exercise of 499 Series C Convertible Preferred Warrants outstanding into 499 shares of Series C Preferred Stock and the subsequent conversion of said Series C Preferred Stock to common stock and (b) the conversion of 36,765 outstanding shares of Series E Convertible Preferred Stock to common stock.

RISK FACTORS

An investment in our securities involves a high degree of risk. Before deciding whether to invest in our securities, you should carefully consider the risks discussed under the Section captioned "Risk Factors" contained in our Annual Report on Form 10-K for the year ended December 31, 2017 and in our Quarterly Reports on Form 10-Q filed with the Securities and Exchange Commission subsequent to the Form 10-K, and in other documents that we subsequently file with the Securities and Exchange Commission, all of which are incorporated by reference in this prospectus supplement and the accompanying prospectus in their entirety, together with other information in this prospectus supplement, the accompanying prospectus, the information and documents incorporated by reference herein and therein, and in any free writing prospectus that we have authorized for use in connection with this offering. If any of these risks actually occurs, our business, financial condition, results of operations or cash flow could be seriously harmed. This could cause the trading price of our Common Stock to decline, resulting in a loss of all or part of your investment.

Risks Relating to this Offering

If you purchase securities in this offering, you may experience immediate and substantial dilution.

You may incur immediate and substantial dilution in the pro forma net tangible book value per share of Common Stock from the price per share that you pay for the securities in this offering. If the holders of outstanding options or warrants or other outstanding convertible securities exercise or convert those options or warrants or other outstanding convertible securities at prices below the public offering price, you will incur dilution.

We have broad discretion to determine how to use the proceeds raised in this offering, and we may not use the proceeds effectively.

Our management will have broad discretion over the use of proceeds from this offering, and we could spend the proceeds from this offering in ways with which you may not agree or that do not yield a favorable return. We intend to use the net proceeds from this offering for working capital and other general corporate purposes. As of the date of this prospectus supplement, we cannot specify with certainty all of the particular uses of the proceeds from this offering. Accordingly, we will retain broad discretion over the use of such proceeds. If we do not invest or apply the proceeds of this offering in ways that improve our operating results, we may fail to achieve expected financial results, which could cause our stock price to decline.

We are currently not in compliance with Nasdaq listing requirements. If we do not regain compliance and continue to meet Nasdaq listing requirements, our Common Stock may be delisted from Nasdaq, which could affect the market price and liquidity of our common stock and reduce our ability to raise additional capital.

On May 7, 2018, we received a notice from Nasdaq indicating that the Common Stock was subject to potential delisting from Nasdaq because for a period of 30 consecutive business days, the bid price of the Common Stock had closed below the minimum \$1.00 per share requirement for continued inclusion under Nasdaq Marketplace Rule 5550(a)(2) (the “Bid Price Rule”). The notification had no immediate effect on the listing or trading of the Common Stock on Nasdaq. Nasdaq stated in its letter that in accordance with the Nasdaq listing requirements, the Company has been provided an initial period of 180 calendar days, or until November 5, 2018, to regain compliance. On November 6, 2018, the Company was informed by Nasdaq Listing Qualifications Staff that the Company’s request for an additional 180-day period to regain compliance, or until May 6, 2019, was granted. To regain compliance with the Bid Price Rule, the bid price of the Common Stock must close at \$1.00 per share or more for a minimum of ten consecutive business days and the company must meet all other initial listing standards for the Nasdaq Capital Market. Although the Company’s stockholders have granted the Company’s Board of Directors discretionary authority to approve a reverse stock split at an exchange ratio of up to one hundred-for-one at any time on or prior to May 11, 2019, there can be no assurance that effecting the reverse stock split will bring the Company into compliance with the Bid Price Rule. If the Company fails to regain compliance during the second 180-day period or by May 6, 2019, then Nasdaq will notify the Company of its determination to delist the Company’s Common Stock, at which point the Company would have an opportunity to appeal the delisting determination to a Hearings Panel.

In addition, on December 13, 2018, the Company convened and thereafter adjourned its annual meeting of stockholders due to an inability to achieve a quorum as specified in the Company’s bylaws. While we have not received a notice from Nasdaq, it is likely that our inability to achieve a quorum would be seen as a failure to hold an annual meeting within 12 months of the end of our last fiscal year (the “Annual Meeting Requirement”). In order to maintain our Nasdaq listing, we may need to create a plan of compliance to submit to Nasdaq for review and hold another annual meeting. However, there can be no assurance that Nasdaq will accept our plan or that we will be able to regain compliance with the Annual Meeting Requirement or maintain compliance with any other Nasdaq requirement in the future.

If we are unable to meet these requirements, our Common Stock could be delisted from Nasdaq. If our Common Stock were to be delisted from Nasdaq, our Common Stock could continue to trade on the OTCQB or similar marketplace following any delisting from Nasdaq. Any such delisting of our Common Stock could have an adverse effect on the market price of, and the efficiency of the trading market for, our Common Stock, not only in terms of the number of shares that can be bought and sold at a given price, but also through delays in the timing of transactions and less coverage of us by securities analysts, if any. Also, if in the future we were to determine that we need to seek additional equity capital, it could have an adverse effect on our ability to raise capital in the public or private equity markets. Any of these changes could cause the value of your investment to decline.

Risks Relating to Our Business

Our business strategy includes growth, and our financial condition and results of operations could be negatively affected if we fail to grow or fail to manage our growth effectively.

Over the course of our business development as an alternative energy company, we have established a retail and wholesale platform and network of brokers to sell our synthetic gas, MagneGas2®, for use in the metalworking and manufacturing industries. Our business strategy includes continued expansion of this network by way of acquisitions and organic growth. Recently, to further our strategy, we made changes to our executive management team, including a new chief executive officer and interim financial officer. Our ability to successfully grow will depend on a variety of factors, including the ability of these executive officers to execute our business strategy.

Growth opportunities may not be available or we may not be able to manage our growth successfully. If we do not manage our growth effectively, our financial condition and operating results could be negatively affected. Furthermore, there are considerable costs involved in acquiring companies and expanding retail capacity, and generally a period of time is required to generate the necessary revenues to offset these costs, especially in areas in which we do not have an established presence. Accordingly, any such business expansion can be expected to negatively impact our earnings until certain economies of scale are reached.

Pending and future litigation and government investigations may have a material adverse impact on our financial condition and results of operations.

From time to time, we have been subject to litigation. It is possible that we may be subject to litigation or claims for indemnification in connection with the sale of our common stock in inadvertent unregistered transactions that occurred in 2018. The SEC may determine to investigate the unregistered transactions in our common stock, which could subject us to potential enforcement actions by the SEC under Section 5 of the Securities Act of 1933, as amended (the “Securities Act”) and may result in injunctive relief or the imposition of fines. In addition, it is possible that we had other unregistered offers or sales of our common stock, other than the aforementioned inadvertent unregistered transactions that occurred in 2018, and we may be subject to litigation or claims for indemnification in connection with any such offers or sales. If any such claims were to succeed, we might not have sufficient funds to pay the resulting damages. There can be no assurance that the insurance coverage we maintain would cover any such expenses or be sufficient to cover any claims against us. In addition to the monetary value of any claim, any litigation, regulatory action or governmental proceeding to which we are a party could adversely affect us by harming our reputation, diverting the time and attention of management, and causing the Company to incur significant litigation expenses, which would all materially and adversely affect our business.

In addition, we may be a party to litigation matters involving our business, which operates within a highly regulated industry. On September 4, 2018, we received notice that a law firm representing the estate of an individual who sustained life-ending injuries while working for an end user of our products had made a claim to our insurance carrier. The matter is under investigation by the U.S. Department of Transportation and the Occupational Health and Safety Administration. The Company is still investigating the cause of the accident and there have been no conclusive findings as of this time. It is unknown whether the final cause of the accident will be determined and whether those findings will negatively impact Company operations or sales. The Company continues to be fully operational and transparent with all regulatory agencies.

For more information regarding pending litigation or potential legal proceedings, please see the Sections captioned “Item 3. Legal Proceedings” contained in our Annual Report on Form 10-K for the year ended December 31, 2017, “Item 1. Legal Proceedings” contained in our Quarterly Reports on Form 10-Q filed with the Securities and Exchange Commission subsequent to the Form 10-K, and our Current Report on Form 8-K filed with the SEC on December 13, 2018.

Our technology is unproven on a large-scale industrial basis and could fail to perform in an industrial production environment.

The Plasma Arc Flow® System has never been utilized on a large-scale industrial basis. All of the tests that we have conducted to date with respect to our technology have been performed on limited quantities of liquid waste, and we cannot assure you that the same or similar results could be obtained in further tests or on a large-scale industrial basis. We are continuing to develop this technology with the goal of replicating these results in additional tests and on an industrial basis. We cannot predict all of the difficulties that may arise when the technology is utilized on a large-scale industrial basis. In addition, our technology has never operated at a volume level required to be profitable. As our product is an alternative to acetylene, the unstable price of acetylene will impact our ability to become profitable and to sell cost competitive fuel. It is possible that the technology may require further research, development, design and testing prior to implementation of a larger-scale commercial application. Accordingly, we cannot assure you that this technology will perform successfully on a large-scale commercial basis, that it will be profitable to us or that MagneGas2® will be cost competitive in the market.

We may be required to record a significant charge to earnings as we are required to reassess our goodwill or other intangible assets arising from acquisitions.

We are required under U.S. GAAP to review our intangible assets, including goodwill, for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill is required to be tested for impairment annually or more frequently if facts and circumstances warrant a review. Factors that may be considered a change in circumstances indicating that the carrying value of our amortizable intangible assets may not be recoverable include a decline in stock price and market capitalization and slower or declining growth rates in our industry. We may be required to record a significant charge to earnings in our financial statements during the period in which any impairment of our goodwill or amortizable intangible assets is determined.

Risks Related to Our Intellectual Property

Several patents in our patent portfolio have imperfect chains of title, which could result in ownership challenges by third parties. The cost to defend against such ownership challenges or the loss of such patents could have a material adverse effect on our business, operation or financial results.

Our patents, *U.S. Patent No's. 6,183,604, 6,663,752, and 6,673,322*, have defects in their original patent assignments. We have filed several *nunc pro tunc* assignments to correct the assignment defects for each of these patents (the "Corrective Assignments"). The Corrective Assignments are intended to correct the defects in earlier defective patent assignments such that each patent is valid and enforceable by us. The Corrective Assignments do not replace the assignments previously recorded at the U.S. Patent and Trademark Office. Instead, the Corrective Assignments are intended to repair the defects in the prior patent assignments. Notwithstanding the recordation of the Corrective Assignments, the ownership of each patent may be subject to ownership challenges and the costs to defend against such ownership challenges or the loss of such patents could have a material adverse effect on our business, operations or financial results.

Cautionary Note Regarding Forward-Looking Statements

This prospectus supplement (including any documents incorporated by reference herein) contains statements with respect to us which constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, and are intended to be covered by the “safe harbor” created by those sections. Forward-looking statements, which are based on certain assumptions and reflect our plans, estimates and beliefs, can generally be identified by the use of forward-looking terms such as “believes,” “expects,” “may,” “will,” “should,” “could,” “seek,” “intends,” “plans,” “estimates,” “anticipates” or other comparable terms. These forward-looking statements include, but are not limited to, statements concerning future events, our future financial performance, business strategy and plans and objectives of management for future operations. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed in “Risk Factors” in this prospectus supplement and the documents incorporated by reference herein.

We caution readers not to place undue reliance upon any such forward-looking statements, which speak only as of the date they are made. We disclaim any obligation, except as specifically required by law and the rules of the Securities and Exchange Commission, to publicly update or revise any such statements to reflect any change in company expectations or in events, conditions or circumstances on which any such statements may be based, or that may affect the likelihood that actual results will differ from those set forth in the forward-looking statements.

You should read this prospectus supplement, the accompanying prospectus, and the documents that we incorporate by reference herein and therein and have filed as exhibits to the registration statement of which this prospectus supplement is part, completely and with the understanding that our actual future results may be materially different from what we expect. You should assume that the information appearing in this prospectus supplement is accurate as of the date on the cover of this prospectus supplement only. Our business, financial condition, results of operations and prospects may change. We may not update these forward-looking statements, even though our situation may change in the future, unless we have obligations under the federal securities laws to update and disclose material developments related to previously disclosed information. We qualify all of the information presented in this prospectus supplement, and particularly our forward-looking statements, by these cautionary statements.

USE OF PROCEEDS

The proceeds to us before expenses will be \$4,340,000. We estimate the total expenses of this offering will be \$360,400. We intend to use the net proceeds from this offering for working capital and general corporate purposes.

DESCRIPTION OF SECURITIES WE ARE OFFERING

Pursuant to this prospectus supplement and the accompanying prospectus, we are offering 31,000,000 shares of our common stock (“Common Stock”) par value \$0.001 per share. The shares of Common Stock are being sold directly to certain institutional accredited investor(s) pursuant to a securities purchase agreement dated January 11, 2019. The shares of Common Stock are being sold at a purchase price of \$0.14 per share.

As of January 11, 2019, our authorized capital stock consisted of 190,000,000 shares of Common Stock, of which 155,122,528 shares were issued and outstanding, and 10,000,000 shares of preferred stock, par value \$0.001 per share, of which 36,765 shares of Series E Convertible Preferred Stock are issued and outstanding. In addition, as of January 10, 2019, there were issued and outstanding options to purchase 231,084 shares of Common Stock and warrants to purchase 46,827,778 shares of our Common Stock. The authorized and unissued shares of Common Stock and preferred stock are available for issuance without further action by our stockholders, unless such action is required by applicable law or the rules of any stock exchange on which our securities may be listed. Unless approval of our stockholders is so required, our board of directors will not seek stockholder approval for the issuance and sale of our Common Stock.

Common Stock

Holders of our Common Stock are entitled to one vote for each share on all matters submitted to a stockholder vote. Our Common Stock does not have cumulative voting rights. Holders of our Common Stock representing a majority of the voting power of our capital stock issued and outstanding and entitled to vote, represented in person or by proxy, are necessary to constitute a quorum at any meeting of our stockholders. A vote by the holders of a majority of our outstanding shares is required to effectuate certain fundamental corporate changes such as liquidation, merger or an amendment to our certificate of incorporation. Although there are no provisions in our charter or by-laws that may delay, defer or prevent a change in control, the board of directors is authorized, without stockholder approval, to issue shares of preferred stock that may contain rights or restrictions that could have this effect. Holders of Common Stock are entitled to share in all dividends that the board of directors, in its discretion, declares from legally available funds. In the event of liquidation, dissolution or winding up, each outstanding share entitles its holder to participate pro rata in all assets that remain after payment of liabilities and after providing for each class of stock, if any, having preference over the common stock. Holders of our Common Stock have no pre-emptive rights, no conversion rights

and there are no redemption provisions applicable to our Common Stock.

All of our outstanding shares of Common Stock are, and the shares of Common Stock to be issued in this offering will be, fully paid and nonassessable.

Effective as of October 31, 2018, our board of directors and our majority stockholder approved a reverse stock split of the outstanding shares of our Common Stock at any time on or prior to the date of May 11, 2019, at an exchange ratio of up to one hundred-for-one (the “Reverse Split”). The board of directors will determine the exchange rate of the Reverse Split in its discretion. The Reverse Split is intended to bring the Company into compliance with Nasdaq listing standards so that its shares of Common Stock may continue to be traded on the Nasdaq.

Preferred Stock

As of January 11, 2019, we have two series of preferred stock outstanding, consisting of 449 shares of Series C Convertible Preferred Warrants exercisable into 499 Series C Convertible Preferred shares, and 36,765 shares of Series E Preferred Stock.

Series C Preferred Stock

The Company has designated 250,000 shares of Series C Preferred Stock, par value \$0.001 per share, and 0 shares are issued and outstanding. As of the date hereof, there are 499 Series C Convertible Preferred Warrants outstanding which are exercisable into 499 shares of Series C Preferred Stock at an exercise price of \$900 per share. The shares of Series C Preferred Stock have a stated value of \$1,000 and each share is initially convertible into common stock at a conversion price of \$3.00 per share, subject to adjustment as set forth below. The holders of shares of Series C Preferred Stock are entitled to receive dividends, when and as declared by the Board and after the occurrence of a triggering event. Until such time as all triggering events then outstanding are cured, the holders shall be entitled to receive dividends at a rate of 18.0% per annum.

At any time the holder may, at its option, convert any shares of Series C Preferred Shares at an alternate conversion price as follows:

The lower of (A) the applicable conversion price as then in effect and (B) the greater of (x) \$0.09 and (y) the lowest of (i) 85% of the Value Weighted Average Price ("VWAP") of the common stock as of the trading day immediately preceding the delivery or deemed delivery of the applicable conversion notice, (ii) 85% of the VWAP of the common stock as of the trading day of the delivery or deemed delivery of the applicable conversion notice and (iii) 85% of the price computed as the quotient of (I) the sum of the VWAP of the common stock for each of the ten (10) trading days with the lowest VWAP of the common stock during the twenty (20) consecutive trading day period ending and including the trading day immediately preceding the delivery or deemed delivery of the applicable conversion notice, divided by (II) ten (10).

In lieu of conversion, upon a triggering event, the holder may require the Company to redeem all or any of the Preferred Shares at a price equal to the greater of (i) the product of (A) the conversion amount of the Preferred Shares to be redeemed multiplied by (B) a redemption premium of 115% and (ii) the product of (X) the conversion rate with respect to the conversion amount in effect at such time of redemption multiplied by (Y) the product of (1) a redemption premium of 115% multiplied by (2) the greatest closing sale price of the common stock on any trading day during the period commencing on the date immediately preceding such Triggering Event and ending on the date the Company makes the entire redemption payment.

The Company may, at its option following notice to each holder, redeem such amount of Preferred Shares by paying to each holder the corresponding installment amount in cash. The applicable installment conversion price with respect to a particular date of determination, shall be equal to the lower of (A) the conversion price then in effect and (B) the greater of (x) \$0.09 and (y) the lower of (i) 85% of the VWAP of the common stock as of the trading day immediately preceding the applicable Installment Date and (ii) 85% of the quotient of (A) the sum of the VWAP of the common stock for each of the ten (10) trading days with the lowest VWAP of the common stock during the twenty (20) consecutive trading day period ending and including the trading day immediately prior to the applicable Installment

Date, divided by (B) ten (10).

If the Company elects to effect an installment redemption in lieu of an installment conversion, in whole or in part, such Preferred Shares shall be redeemed by the Company in cash on the applicable Installment Date in an amount equal to 103% of the applicable installment redemption amount.

Series E Preferred Stock

The Company has designated 455,882 shares of Series E Preferred Stock, par value \$0.001 per share, and 36,765 shares of Series E Preferred Stock are issued and outstanding. The holders of shares of Series E Preferred Stock are entitled to receive dividends, when and as declared by the Board. The shares of Series E Preferred Stock have a stated value of \$1.36 per share. The initial conversion price of these preferred shares to common stock will be \$1.36. In addition, under the Series E Convertible Preferred Stock designation, holders representing at 65% of the aggregate stated value amount of the Series E Convertible Preferred Stock then outstanding shall be required for any change, waiver or amendment to the certificate of designations provided, that 65% must include the holders as long as they beneficially own any preferred shares.

Upon the occurrence of a triggering event as disclosed in the Series E Convertible Preferred Stock designation until such time as all triggering events then outstanding are cured, the holders shall be entitled to receive dividends at a rate of 18.0% per annum.

At any time the holder may, at its option, convert the Series E Convertible Preferred Stock under an alternate conversion price which is the lower of the applicable conversion price in effect on the applicable conversion date of the applicable alternate conversion and the greater of the following:

- a) the floor price and the lowest of 75% of the closing bid price of the common Stock as of the trading day immediately preceding the delivery or deemed delivery of the applicable conversion notice,
- b) 75% of the variable weighted average price of the common stock as defined in the preferred designation

In lieu of conversion, upon a triggering event, the holder may require the Company to redeem all or any of the shares of Series E Preferred Stock at a price equal to the greater of calculations as defined in the preferred designation.

If the holders of outstanding options or warrants or other outstanding convertible securities exercise or convert those options or warrants or other outstanding convertible securities at prices below the public offering price, you will incur dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if